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Federal Communications Commission
Office of Secretary

December 6, 1996

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Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Applications for Minor Changes in Facilities
Per Report and Order in MM Docket No. 94-78
Radio Stations WBAM-FM and WBHK(FM)

Dear Mr. Caton:

The purpose of this letter is to request, on behalf of the licensees of Station WBHK(FM) in Warrior, Alabama, and Station WBAM-FM in Montgomery, Alabama, a ninety day extension of the time for filing minor change applications for construction permits specifying operation on Channels 254C1 and 255C1 respectively.

On December 11, 1995, the Commission released a Report and Order in MM Docket No. 94-78, 10 FCC Rcd 13630 (1995), in which it amended the FM Table of Allotments in §73.202(b) of the Rules to allot Channel 254C1 to Warrior and Channel 255C1 to Montgomery. The Report and Order also modified the licenses of WBHK (then known as WLBI) and WBAM-FM to specify operation on the new upgraded channels subject to certain conditions, one of which was:

"Within 90 days of the effective date of this Order, the licensees shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility."

The Order said that its effective date was January 25, 1996. It did not, however, become effective on that date because, prior thereto on January 11, 1996, a petition for reconsideration was

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filed by William P. Rogers ("Rogers"). Rogers was a party adversely affected by the Order. He had filed a counterproposal in the rulemaking proceeding that was inconsistent with the allotments proposed by the licensees of WBAM-FM and WBHK, but had been rejected in the Report and Order. Under §1.420(f) of the Rules then in effect, the result of filing his petition for reconsideration was automatically to "stay the effect of [the] change in the rules pending action on the petition."

The Commission has never acted on Rogers' petition for reconsideration. However, in August 1996, the Commission amended §1.420(f) of the Rules to delete the automatic stay of the effect of any amendment of the table of FM allotments resulting from the filing of a petition for reconsideration (FCC 96-301, 61 Fed. Reg. 43468). That Order deleting the automatic stay was by its terms made effective on September 23, 1996.

Though no further order has been issued in the rulemaking proceeding making clear the date by which upgrade applications must now be filed, it is possible to construe the December 1995 Report and Order as having become effective on September 23, 1996, thereby triggering as of that date the running of the ninety days within which the licensees of WBHK and WBAM-FM are required to file their minor change applications for construction permits specifying new C1 facilities. This would require that the applications be filed not later than December 23, 1996.

The licensee of WBHK is, however, still engaged in negotiations for a suitable new transmitter site for WBHK, and the spacing requirements of the rules make the selection of the WBHK site and filing of its application a necessary prerequisite to the filing of the WBAM-FM application. Also, because of the continued pendency of the Rogers petition for reconsideration, construction by WBHK and WBAM-FM of their new facilities will be at their own financial risk in the event that the Commission Order last December should ultimately be modified.

Accordingly, the licensees of both stations request that the time for filing their minor change applications for construction permits for new C1 facilities be extended, if an extension be required, for ninety days from December 23, 1996. This would extend the period to and including March 24, 1997.

The undersigned counsel for the licensees of WBAM-FM and WBHK has spoken with counsel for Rogers, who has advised that he will not oppose this request for extension. The policy of the

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Audio Services Division, Mass Media Bureau, in dealing with requests such as this has been stated as follows (see letter dated April 5, 1995, from the Division Chief to the licensee of Station WQXE(FM), Elizabethtown, KY, 1800B3-RPC):

"The Commission's staff accepts justifiable requests for extension of time to file upgrade applications, and if no objection is received, the additional time is generally afforded. Due to the Commission's limited resources, the staff does not issue letters granting such requests."

In view of this policy, unless a denial of this request should be received sufficiently in advance of December 23 to allow WBAM-FM and WBHK to file their C1 upgrade applications by that date, they will assume that the requested extension has been granted. Please advise promptly if this assumption should be incorrect.

Sincerely,



Sidney White Rhyme
Counsel for Deep South Broadcasting
Company, Licensee of WBAM-FM,
and
North South Broadcasting Company,
L.L.C., Licensee of WBHK(FM)

SWR/wp

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